

## **Cable and Video Public Rights-of-Way Use and Encroachment Ordinance**

**WHEREAS**, the City, pursuant to its Charter, Tennessee statutes and decisions, is granted complete control over its streets and public rights-of-way (“PROW”) within the municipal boundaries of the City as established by its Charter and annexation ordinances adopted from time to time by the Memphis City Council; and

**WHEREAS**, the City acting in its governmental capacity has the authority to regulate the use of its PROW in order to protect the health, safety and general welfare of the inhabitants of the City; and

**WHEREAS**, the Competitive Cable and Video Services Act (the “Act”) granted to cable and video service providers the absolute discretion to choose whether to utilize either a state-issued certificate of franchise authority or a local franchise, but expressly required such cable and video service providers to abide by the rights-of-way ordinances and resolutions of municipalities in which the service is provided as well as any applicable state laws or rules; and

**WHEREAS**, the City acting in its governmental capacity has the authority to regulate the use of its PROW in order to protect the health, safety and general welfare of the inhabitants of the City; and

**WHEREAS**, the Act preserved the existing powers of the City to promote the health, safety and welfare of its communities and its citizens, including the authority to regulate, during the permitting process, the installation and placement of video or cable facilities for the purpose of addressing the aesthetic concerns of the community.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises contained herein, the parties agree as follows:

1. ***DEFINITIONS.***

“Act” shall mean Competitive Cable and Video Services Act , Tenn. Code Ann § 7-59-301, *et seq.*

“Permittee” shall mean a cable or video service Provider who has obtained or who is required to obtain a state or local franchise authority to provide cable or video service over a cable system or video service network facility.

"Chief Administrative Officer or CAO" shall mean the CAO of the City of Memphis, or the person designated by the Mayor to carry out the duties and responsibilities of the Chief Administrative Officer. Chief Administrative Officer shall also mean the person under the

CAO's management and control designated by the CAO to administer the provisions of this Ordinance.

"City Engineer" shall mean the position of City Engineer created by the City Charter or a successor position, or an acting City Engineer or the designee of the City Engineer.

"City Property." All real property owned by the City, other than Public Rights-of-Way as that term is defined herein, and all other property held in a proprietary capacity by the City, which are not subject to right-of-way licensing and franchising as provided in this Agreement.

"City Requirements." All laws, rules, regulations, policies and directives of general application of the City, in effect at present or to be adopted in the future by the City Council, pursuant to its police powers or otherwise, or promulgated by the Mayor in the furtherance of his executive and contractual powers, provided same is consistent with Federal and State law.

"Facilities." All facilities of any kind placed in, on or above the Public Rights-of-Way by Cable Permittee.

"Person" An individual, corporation, association, partnership, joint venture, or other entity specifically including private utility, public utility.

"Public Rights-of-Way" The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the City holds any property interest (fee title, easement or otherwise) or exercises any rights of management or control and which, consistent with the purposes for which it was acquired or dedicated, may be used for the installation and maintenance of Person's Facilities.

"Utility Infrastructure" All City electric utility distribution poles, transmission structures, ducts and all other City owned or operated transmission structures, distribution conduit, building entry conduit, utility tunnels, manholes, vaults, radio towers, other radio equipment, fiber optic cable capacity and active communications capacity, together with all appurtenant facilities.

"Video service" means the provision of video programming through wireline or telecommunications facilities located, at least in part, in the public rights-of-way without regard to delivery technology, including Internet protocol technology or any other technology.

#### **SECTION 1. DECLARATION OF AUTHORITY.**

The City of Memphis has been delegated, as proprietor, the entire control over the streets, alleys, thoroughfares and rights-of-way located within its corporate limits by the General Assembly pursuant to Chapter 11 of the Acts of 1879 and subsequent Acts, all of which were preserved by Section 17 of the City's Home Rule Charter. In addition the City possesses police

powers to regulate the use of its streets, alleys, thoroughfares, rights-of-way and public places for the protection of the health, safety and welfare of its citizens.

**SECTION 2. AUTHORITY NOT EXCLUSIVE.**

Ordinance and the authority conferred in this Ordinance is not exclusive. All Persons shall respect the rights and property of the City and other authorized users of the Public Rights-of-Way. Except as otherwise required by applicable law, by agreement and request of the Cable Permittee disputes between Cable Permittee and parties other than the City over the use, of the Public Rights-of-Ways may be submitted to the City for resolution. Decisions rendered by the City shall be final and binding.

**SECTION 3. PERMITS REQUIRED.**

3.1 Permits Required – each Cable or Video Provider shall not construct, reconstruct, or relocate Cable, Telecommunication or Video Facilities (or parts thereof) within the Public Rights-of-Way or on City Property unless authority has been obtained in accordance with other applicable City Ordinances.

3.2 Installations on City Property and Private Property - No cable line, wire, amplifier, converter, or other piece of equipment owned by a Cable or Video Provider shall be installed by any such Provider on any City property or private property without first securing the written permission of the City or property owner and/or lawful occupant of any property involved.

3.3 Permit and Inspection Charges. All permit and inspection charges related to a Cable or Video Provider's construction in the Public Rights-of-Way shall be paid by the Cable or Video Provider as they are usual and customarily assessed by the City Engineer.

**SECTION 4. CONSTRUCTION OF CABLE OR VIDEO PROVIDER'S FACILITIES.**

**4.1 Obligations of Cable Permittee Regarding the Public Rights-of-Way.**

(a) Compliance with Law. Cable Permittee is explicitly subject to the police powers of the City, any other governmental powers, and the City's rights as a property owner under state and federal laws. All work done by Cable or Video Provider in connection with the construction, expansion, reconstruction, maintenance or repair of its facilities in the Public Rights-of-Way shall be subject to and governed by all City Requirements, and applicable federal and state rules and regulations. Cable or Video Provider shall place certain facilities underground when required by applicable City Requirements. For this Section, the term "Cable or Video Provider" shall also mean a Person who controls or

manages physical transmission facilities, and all appurtenant equipment, installed in the Public Rights-of-Way.

(b) Upon request, Cable or Video Provider shall provide the City timely information as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of facilities performed by Cable or Video Provider in the Public Rights-of-Way.

(c) Construction Work Regulation, Maintenance and Underground Facilities Use.

(1) All excavations and other construction in the Public Rights-of-Way shall be performed in accordance with all applicable City Requirements, including the obligation to use trenchless technology whenever possible. Furthermore, all such construction shall be undertaken so as to minimize interference with the use of public and private property and in accordance with any direction given by the City under the police and regulatory powers of the City.

(2) A Cable or Video Provider may be required by the City to attach portions of their facilities to poles or duct trench space maintained by any other person or entity authorized by the City to the extent reasonable. A Cable or Video Provider shall not be required to attach its facilities to the poles or duct trench space of any other person or entity authorized by the City if it can be shown to the City's satisfaction that such Cable or Video Provider shall be subjected thereby to increased risks of interruption to its service or to increased liability for accidents, or unreasonably delay construction or availability of service, or if the facilities of such other person or entity are not of the character, design and construction required by, or are not being maintained in accordance with current practice, or are not available to the Cable or Video Provider on reasonable terms, including, without limitation, a reasonable fee.

(3) In furtherance of the public interest in safety, health and public welfare and to facilitate the safe management of Public Rights-of-Way, the construction, expansion, reconstruction, excavation, use, maintenance and operation of Cable or Video Provider 's Facilities and property shall be subject to all generally applicable City Requirements as determined by the City Engineer.

(4) In addition to any other City Requirements, except in an emergency, fourteen (14) days prior to the commencement of construction which involves any alteration to the surface or the sub-surface of the

Public Rights-of-Way, to the extent generally required, Cable or Video Provider shall furnish the City Engineer (or such other officials as the City may designate from time to time) with construction plans and maps showing the routing of any new construction and construction plans. Cable or Video Provider shall not commence construction until the plans and drawings have been approved in writing by the City Engineer. Such approval shall not be unreasonably withheld or delayed.

(5) Upon request by written notice of the City, a Cable or Video Provider shall promptly remove and abate any facility that is declared an emergency by the City. A Cable or Video Provider and the City shall cooperate to the extent possible to assure continuity of service during the removal. If any Cable or Video Provider, after notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of such Cable or Video Provider which shall be promptly paid to the City, all without compensation or liability for damages to the Cable or Video Provider.

(6) Upon completion of initial or any subsequent construction work, Cable or Video Provider shall promptly restore the Public Rights-of-Way in accordance with applicable City Requirements. Cable or Video Provider may excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of its Facilities.

(7) Except in an emergency, Cable or Video Provider shall not excavate any pavement in any public alley or street or significant amounts of any unpaved Public Rights-of-Way without first complying with all applicable City Requirements.

(8) Within one hundred twenty (120) days of completion of each segment of Cable or Video Provider's Cable, Telecommunications or Video Facilities, the Cable or Video Provider shall supply the City with a complete set of "as built" drawings for that segment in a format to be prescribed by the City Engineer. The Cable or Video Provider shall provide the City a complete set of "as-built" drawings every six (6) months incorporating any changes to Cable or Video Provider's Facilities in the Public Rights-of-Way, in a format to be prescribed by the City Engineer. Cable or Video Provider shall also obtain the City's approval before any relocation of Cable or Video Provider's Facilities in the Public Rights-of-Way. Such approval shall not be unreasonably withheld. In addition, Cable or Video Provider shall provide annually to the City a map of its Facilities to the extent any changes have occurred in Facilities in the Public Rights-of-Way.

(9) Each Cable or Video Provider shall participate in the Tennessee One-Call (Area Utility Coordination) ("TNN One-Call") meetings and coordinate all new construction with the TNN One-Call. Every Cable or Video Provider's Facilities shall bear identification marks as may be established by the TNN One-Call, to the extent such Facilities are installed after the TNN One-Call establishes such identification marks.

#### 4.2 Work by Others, Construction by Abutting Owners and Alterations to Conform with Public Improvements.

(a) The City reserves the right to lay and permit to be laid, sewer, gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work, and any attachment, restructuring or changes in aerial

facilities that may be deemed necessary or proper by the City in, across, along, over or under any public street, alley or right-of-way occupied by Cable or Video Provider, and to change any curb or sidewalk or the grade of any street. In permitting such work to be done, the City shall not be liable to any Cable or Video Provider for any damages not directly caused by the willful misconduct or gross negligence of the City; provided, however, that nothing herein shall relieve any other person or entity, including any contractor, subcontractor, or agent from liability for damage to Cable or Video Provider's facilities.

(b) In the event that, during the term of the Agreement, the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or right-of-way, such grant to an abutting landowner shall be subject to the rights herein granted to a Cable or Video Provider. In the event that the City shall close or abandon any Public Right-of-Way, which contains any portion of Cable or Video Provider's facilities, any conveyance of land contained in such closed or abandoned Public Right-of-Way shall be subject to the rights herein granted.

(c) During the term of all Agreements, each Cable or Video Provider shall be liable for the acts or omissions of any entity used by Cable or Video Provider (including an Affiliate) when such entity is involved directly or indirectly in the construction and installation of Cable or Video Provider's facilities to the same extent as if the acts or omissions of such entity were the acts or omissions of a Cable or Video Provider.

(d) Relocation or Removal of Facilities: Within one hundred twenty (120) days following written notice from the City, the Cable or Video Provider shall, at their expense, temporarily or permanently remove, relocate, change or alter the

position of any of their facilities or Facilities that are in the Public Rights-of-Way whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

- (i) The construction, repair, maintenance or installation of any City or other public improvement in or upon the Public Rights-of-Way; or
- (ii) The operations of the City or City affiliated governmental entities, to include, but not be limited to, the Memphis Transit Authority, and Memphis Light, Gas, and Water Division (so long as it is municipally owned) in or upon the Public Rights-of-Way.
- (iii) This subsection 4.2(d) does not apply as to any private, non-governmental third party or other governmental entities unaffiliated with the City requesting relocation or removal of Facilities in the Public Rights-of-Way.

**SECTION 5. INSTALLATION STANDARDS APPLICABLE TO ALL TELECOMMUNICATIONS**

***FACILITIES.***

5.1 A permit for cable, telecommunications and video facilities within the public right-of-way shall comply with the following installation standards:

- (a) The cable, telecommunications and video facility shall be colored to blend with other streetscape or surrounding features to the extent feasible.
- (b) In the event the parkway and/or roadway, where approved, adjacent the applicant's cable, telecommunications and video facility is disturbed or altered in the process of installation, the applicant shall restore the parkway and/or roadway to the condition in which it existed prior to installation.
- (c) No modifications to above-ground or at-grade cable, telecommunications and video facility, including those related to size, color, and shape of the housing, may be made by the applicant without first having obtained approval from the City Engineer.
- (d) Where feasible, as new technology becomes available, the applicant shall place an existing or proposed above-ground cable, telecommunications or video facility below ground.

- (e) There shall be no more than one above-ground cable, telecommunications or video facility per each residential frontage.
- (f) In residential districts where a cable, telecommunications or video facility is proposed adjacent to a corner lot, the facility shall be located along the side yard and not on the primary frontage of a residence, if feasible.
- (g) To the extent feasible, the area surrounding the telecommunications facility shall be maintained with landscaping or alternate screening. The landscaping shall be irrigated and of a sufficient height and density to screen the facility from the public sidewalk and parkway.
- (h) The applicant shall obtain the City Engineer's approval of a tree protection plan prepared by a Certified Arborist for the installation of any cable, telecommunications or video facility located within the canopy of a street tree, or a protected tree on private property, or within a minimum of a ten foot radius of the base of such a tree. Depending on site specific criteria (e.g. location of tree, size and type of tree etc.), a radius greater than 10 feet may be required by the City Engineer.
- (i) No cable, telecommunications or video facility may be illuminated unless specifically required by the Federal Aviation Administration or other governmental agencies.
- (j) At the discretion of the City Engineer, the applicant may be required to provide an authorization to permit the City to hire an independent, qualified consultant to evaluate any technical aspect of a proposed wireless cable, telecommunications or video facility, including, but not limited to, issues involving radio frequency emissions, alternative designs, and alternative sites. Any authorization for this purpose shall include a deposit to cover all reasonable costs associated with the consultation. Any proprietary information disclosed to the City or the consultant is deemed not to be a public record, and shall remain confidential and not to be disclosed to any third party without the express consent of the applicant, unless otherwise required by law.

5.2 Protect Structures - In connection with the construction, maintenance, repair or removal of the System, the Cable or Video Provider shall, at its own cost and expense, protect any and all existing structures and improvements, including landscaping and trees belonging to the City, and all designated historical landmarks, as well as all other structures within any designated historical district. The Cable or Video Provider shall obtain the prior approval of the City before altering or crossing any water main, sewerage or drainage system, or any other municipal, state or federally-owned structure in the streets required because of the presence of the System in the Streets. Any such alteration shall be made by the Cable or Video Provider at



its sole cost and expense, and in a manner prescribed by the City. The Cable or Video Provider shall be liable, at its own cost and expense, to replace or repair and restore to serviceable condition in a manner as may be specified by the City, any street or any municipal, state or federally-owned structure involved in the construction of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of the Cable or Video Provider pursuant to its franchise.

5.3 Erection, Removal and Use of Poles - No poles shall be erected by Cable or Video Provider without prior approval of the City with regard to location, height, types and any other pertinent aspect. However, no location of any pole or wire-holding structure of Cable or Video Provider shall give rise to a vested interest, and such pole or structures shall be removed or modified by Cable or Video Provider at its own expense whenever the City determines that the public convenience would be enhanced thereby. Approval under this section shall require the prior written approval of the City Engineer, who shall not unreasonably withhold his approval. Such location height, types and any other pertinent aspect shall be approved if in compliance with the requirements of this and other applicable ordinances. The City Engineer shall not unreasonably delay or deny permission to Cable or Video Provider to proceed with construction. Any denial must be in writing specifying the reasons for the denial. Any denial may be appealed to City Council or to a third party hearing examiner at the City's discretion, if a written request to appeal is submitted within ten days of the denial.

5.4 Upon request of the City or other authority of competent jurisdiction, Cable or Video Provider shall remove and abate any portion of the System or any facility that is dangerous to life or property, and in case Cable or Video Provider, after ten (10) days written notice from the City Engineer, fails or refuses to act, the City may remove, relocate or abate the same, at the sole cost and expense of Cable or Video Provider, all without compensation or liability for damages to Cable or Video Provider; provided, however, Cable or Video Provider may recover damages sustained by it from any person other than the City who relocates, removes or abates any such Cable or Video Provider facility negligently or without the City Engineer giving ten (10) days written notice to Cable or Video Provider authorizing such other person to relocate or remove Cable or Video Provider's facilities on behalf of the City.

#### **SECTION 6. MOVING WIRES.**

The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any other optical fibers, wires, cable, amplifiers, appliances, or other parts of the System in the streets or in City buildings, in which event the City shall not be liable therefor to the Cable or Video Provider. Cable or Video Provider shall be given prior telephonic notice to the extent practicable under the circumstances.

#### **SECTION 7. TEMPORARY REMOVAL OF FACILITIES FOR DEMOLITION OF BUILDINGS.**

Upon the request of a person holding a permit issued by the City for the moving or demolition of a building, and at least ten 10 days notice, Cable or Video Provider shall temporarily raise, lower or removing its facilities to permit the removal or demolition of such building. The expense of such temporary removal, raising or lowering of facilities shall be paid by the person requesting the same and Cable or Video Provider shall have the authority to require such payment in advance; provided, however, that no payment (direct or indirect) shall be required of the City.

#### **SECTION 8. REMOVAL OF CITY PROPERTY.**

No property of the City is to be removed from the right-of-way, including signage on utility poles, without prior written approval from the City.

#### **SECTION 9. RESERVATION OF RIGHTS.**

The City reserves the right to exercise its police powers to modify, vacate or transfer any right-of-way in use by Cable or Video Provider for a public purpose. At Cable or Video Provider's own risk, the City has the predominant right to use its right-of-way in the placement, maintenance and repair of sewers, water mains and other public utility franchises or to relocate or remove Cable or Video Provider's System where the City determines that the public convenience and/or necessity would be enhanced or for any other public purpose, including, but not limited to the use of any Public Right-of-Way used by Cable or Video Provider for public purposes. The permits referred to in Section 4 may be amended or revoked in whole or in part by the issuing department whenever such action is necessary or advisable for a public purpose. Cable or Video Provider shall make no claims for costs or damages against the City by reason of such removal or relocation. Upon 30 days written notice to Cable or Video Provider of partial or complete revocation of such permit from the City Engineer, Cable or Video Provider shall remove, modify, replace or relocate its facilities as required at its own expense. In the event Cable or Video Provider does not remove, modify, replace or relocate its facilities as required by said notice within thirty (30) days as aforesaid, the City Engineer may cause the same to be done at Cable or Video Provider's expense and all expenses incurred or damages paid by the City on account of such action shall be paid by Cable or Video Provider on demand. Cable or Video Provider shall remove, replace or modify, at its own expense, the installation of any of its facilities as may be deemed necessary by any other appropriate governmental authority to meet such authority's proper responsibilities. In the event the City exercises its predominant right to use any Public Right-of-Way used by Cable or Video Provider for a public purpose, the City shall reasonably cooperate with Cable or Video Provider in finding an alternate site for any telecommunications facilities removed and in avoiding disruption to Cable or Video Provider's cable, telecommunications or video system to the extent not reasonably required by the City. In an emergency, as determined by the City Engineer, the City may order Cable or Video Provider to remove or relocate its facilities within forty-eight (48) hours. If the City exercises any of its rights pursuant to this Section, Cable or Video Provider shall have the option, upon notice to the

City Engineer, of abandoning the portion of its cable, telecommunications or video system to be so removed or relocated and deleting such portion from the Public Right-of-Way.

Notwithstanding the above, in the event Cable or Video Provider provides documentary support that the time allowed for removal or relocation of facilities as required by this Section are inadequate in the reasonable judgment of the City Engineer, the City Engineer may grant additional time, but not to exceed 180 days.

#### **SECTION 10. ABANDONMENT OF RIGHT-OF-WAY.**

In the event that the City shall close or abandon any public street, alley or right-of-way, which contains any portion of Cable or Video Provider's system, any conveyance of land contained in such closed or abandoned public street, alley, highway or right-of-way shall be subject to the rights herein granted.

#### **SECTION 11. RELOCATION OF THE SYSTEM.**

11.1 New Grade or Lines - If the grades or lines of any street on which Cable or Video Provider's System is placed are changed at any time during the term of the Franchise of the Cable or Video Provider, then the Cable or Video Provider shall, at its own cost and expense and upon the request of the City, protect or promptly alter or relocate the System, or any part thereof, so as to conform with such new grades or lines. In the event that the Cable or Video Provider refuses or neglects to so protect, alter, or relocate all or part of the System, the City shall have the right to break through, remove, alter or relocate such part of the System, without any liability to the City, and the Cable or Video Provider shall pay to the City the costs incurred in connection with such breaking through, removing, altering or relocating.

11.2 Relocation of Right-of-Way - Wherever a Public Right-of-Way or other public property is being constructed, paved (whether or not such paving is part of a more extensive improvement project), resurfaced, relocated or otherwise altered or improved (including, but not limited to, the installation of sidewalk, curb, gutter, drainage facilities, water mains, or sewer mains, traffic signals or trees), Cable or Video Provider shall, within ninety (90) days of written notice from the City Engineer, and at no cost (direct or indirect) to the City, remove or relocate any Cable or Video Provider facility located within the Public Right-of-Way or public property or perform such work as it deems necessary for the extension of new facilities, except that Cable or Video Provider may recover from any other person other than the City who relocates any such Cable or Video Provider facility without ninety (90) days written notice from the City Engineer authorizing such other person to relocate or remove Cable or Video Provider's facilities. The relocation or extension of new facilities shall be to a location approved by the City. Failure to obtain the City's approval of the location of facilities relocated under this section will be considered a forfeiture under Section 31 of this Ordinance. Cable or Video Provider shall be responsible for any damage it causes to property, including damage to trees and other landscaping, as a result of the relocation or removal of facilities.

11.3 Time Limit - Liquidated Damages - Failure of Cable or Video Provider to remove or relocate the facility to a location approved by the City within ninety (90) days of the City's written notice shall entitle the City to recover liquidated damages from Cable or Video Provider. The liquidated damages for failure to remove or relocate a facility shall not exceed \$250.00 per diem.

If Cable or Video Provider believes it will be unable to complete the relocation within ninety (90) days from receipt of notice from the City, Cable or Video Provider shall explain the reasons for its inability in detail and the City and Cable or Video Provider shall attempt to agree on an alternate schedule, subject, however, to the City's right to finally determine the schedule and liquidated damages, as long as Cable or Video Provider's explanation is not unreasonable, Cable or Video Provider shall be excused, unless the City is subject to construction delay claims which exceed this amount.

#### **SECTION 12. SUSPENSION OR REVOCATION OF CONSTRUCTION PERMIT.**

The City Engineer may suspend or revoke any permit issued by the City or take any action he deems reasonably necessary, including the stopping of work, should Cable or Video Provider violate the terms of said permit, until said violation has been corrected to the City Engineer's reasonable satisfaction. The City Engineer shall not unreasonably suspend or revoke any permit. Any suspension or revocation must be in writing specifying the reasons for the suspension or revocation. Any suspension or revocation may be appealed to City Council or to a third party hearing examiner at the City's discretion, if a written request to appeal is submitted within ten days of the suspension or revocation.

#### **SECTION 13. TREE TRIMMING.**

13.1 Upon ten days written notice, the Cable or Video Provider may trim trees or other vegetation owned by the City or encroaching upon the Public Rights-of-Way to prevent their branches or leaves from touching or otherwise interfering with its wires. All trimming or pruning shall be at the sole cost of the Cable or Video Provider .

13.2 The Cable or Video Provider may contract for said trimming or pruning services with any person approved by the City prior to the rendering of said services.

#### **SECTION 14. PERFORMANCE BONDS AND DAMAGES.**

14.1 Considering the extent of any work to be performed in the Public Rights of Way the City Engineer may require a Cable or Video Provider to file with the City Engineer a performance bond in favor of the City for such amount as the City Engineer may reasonable determine necessary to protect the City's interest in the Public Right of Way. The corporate

surety on such bond will be authorized to do business in Tennessee and acceptable to the City Attorney. The bond shall be maintained throughout any construction and any reconstruction period and until such time as determined by the CAO.

14.2 In the event Cable or Video Provider fails to comply with any law, ordinance or regulation governing use of Public Rights-of-Way or fails to properly construct Cable or Video Provider 's Facilities, there shall be recoverable, jointly and severally, from the Cable or Video Provider or from principal and surety of its bond, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of Cable or Video Provider, plus a reasonable allowance for attorney fees, including the City's legal staff, and costs.

14.3 The City may, upon completion of construction or reconstruction of the Facilities as approved by the CAO, waive or reduce the requirement of Cable or Video Provider to maintain bonds. However, the City may require a performance and payment bond to be posted by Cable or Video Provider for any construction subsequent to the completion of the initial Facilities, in a reasonable amount and upon such terms as determined by the CAO.

14.4 The bond shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after receipt by the City Attorney, by registered mail, a written notice of such intent to cancel or not to renew."

#### SECTION 15. *INSURANCE.*

15.1 Each Cable or Video Provider shall comply with the following:

(a) Each Cable or Video Provider shall obtain and maintain in full force and effect throughout the term of the Agreement insurance with an insurance company licensed to do business in the State of Tennessee and acceptable to the City designated by its representative. All companies will be required to be rated A-VI or better by A.M. Best or A or better by Standard and Poors. Each Cable or Video Provider shall furnish the City with proof of such insurance so required at the time of making the initial application for a permit. The City reserves the right to review these insurance requirements during the effective period of any cable or video franchise agreement, and to reasonably adjust insurance coverage and their limits when deemed necessary and prudent by the City's designated representative, based upon changes in statutory law, court decisions, or the claims history of the industry or the Cable or Video Provider .

(b) The CAO shall be entitled, upon request and without expense, to receive copies of certificates of insurance evidencing coverage stated above. The CAO also may make any reasonable requests for deletion, revision or modification of

particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either City or a Cable or Video Provider or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the CAO, Cable or Video Provider shall exercise reasonable efforts to accomplish the changes and shall pay the cost thereof.

(c) All insurance certificates will contain the following required provisions:

(i) Name the City and its officers, employees, board members and elected representatives as additional insureds (as the interests of each insured may appear) as to all applicable coverage;

(ii) Provide for thirty (30) days notice to the City for cancellation, non-renewal, or material change;

(iii) Provide for notice to both the CAO and the City Secretary by certified mail; and

(iv) Provide that all provisions of the Agreement, as amended, concerning liability, duty, and standard of care, including the Indemnity Section, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies, subject to policy terms and conditions.

#### **SECTION 16. COMPLIANCE WITH LAWS; SEVERABILITY.**

16.1 Notwithstanding any other provisions of this Ordinance to the contrary, each Cable or Video Provider shall at all times comply with all applicable laws and regulations of the Federal, state, county and city governments and all administrative agencies thereof, including but not limited to judicial orders; provided, however, that if any such Federal, state, city, or county law or other applicable regulation shall require the Cable or Video Provider to perform any service, or shall prohibit the Cable or Video Provider from performing any service, in conflict with any law or regulation of the City, then as soon as possible following knowledge thereof, the Cable or Video Provider shall notify the City of the point of conflict believed to exist between such regulation or law and the laws or regulations of the City.

16.2 If any provision of this Ordinance or any related agreement is held by any court or by any Federal, state, or county agency of competent jurisdiction to be invalid as conflicting with any Federal, state or county law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the requirements of any such law, rule or regulation, said provision shall be considered as a separate, distinct and independent part of this Ordinance, and such holding shall not affect the validity and

enforceability of all other provisions hereof or thereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof or thereof which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on the parties hereto, provided that the City shall give the Cable or Video Provider sixty (60) days' written notice of such change before requiring compliance with said provision.

16.3 This Ordinance shall be enforceable to the fullest extent possible in accordance with its terms even if any subsection, sentence, clause, phrase, term, provision, condition, covenant or portion thereof is held invalid or unenforceable by a court of competent jurisdiction.

**SECTION 17. TAXES AND PERMIT FEES.**

Nothing contained in this Ordinance shall be construed to exempt the Cable or Video Provider from any tax levy, permit fee or assessment which is or may be hereafter lawfully imposed on all entities engaged in the same business as the Cable or Video Provider, or as are generally applicable in the City or State.

**SECTION 18. SEVERABILITY.**

If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Ordinance is for any reason held invalid or unenforceable by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, term, provision, condition, covenant and portion of this Ordinance shall be valid and enforceable to the fullest extent permitted by law.

**SECTION 19. ENACTMENT CLAUSE.**

Be it further ordained, that this Ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the chairman of the council, certified and delivered to the office of the Mayor in writing by the comptroller, and become effective as otherwise provided by law.